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Contracts—Suit Against Stockholder by Creditor of Corporation—Per Curiam

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COURT OF APPEALS, 1957 TERM

opinions suggest the inability of the parties to establish conclusively the motivating factors behind defendant's acts.

Suit against Stockholder by Creditor of Corporation — Per Curiam

The stockholder of a corporation told the president orally that if the corporation would engage in an advertising campaign, he would personally reimburse it. The Court dismissed this action by the advertising agency inasmuch as the agency was "at best an incidental beneficiary rather than a third-party creditor beneficiary."¹⁴ However, the defendant's defense of the Statute of Frauds was rejected since the promise was not made to the plaintiff but to a third person.¹⁵

Contracts in Restraint of Trade — Per Curiam

In *Paramount Pad Co. v. Baumrind*,¹⁶ the Court, in a per curiam opinion, held that a contract with a former employee which not only prohibited him from soliciting or divulging the names of plaintiff's customers, but also required him to obtain plaintiff's written permission before accepting any position in the shoulder pad industry, imposed an unreasonable restraint, going beyond plaintiff's legitimate interests. Therefore, the contract was void¹⁷ and an action was properly dismissed which was based upon its breach and inducement of its breach.

CORPORATIONS

Stockholders' Derivative Actions

In *Tropper v. Bysse*¹ the appellant, who owned less than two-tenths of one per cent of the stock of the Camden Forge Company,² brought a derivative stockholder's action in its behalf, naming as defendants Camden and a parent corporation which held more than 98% of Camden's stock. An order was entered pursuant to section 61(b) of the General Corporation Law requiring appellant to post security for expenses which Camden might incur in the action.

Section 61(b) requires a stockholder bringing a derivative action to post security for reasonable expenses, including attorney's fees, which security inures

14. *Tomaso, Feitner and Lane, Inc. v. Brown*, 4 N.Y.2d 391, 175 N.Y.S.2d 73 (1958).

15. 2 WILLISTON, CONTRACTS §460 (1936).

16. 4 N.Y.2d 393, 175 N.Y.S.2d 809 (1958).

17. N. Y. GENERAL BUSINESS LAW §340.

1. 4 N.Y.2d 397, 175 N.Y.S.2d 811 (1958).

2. Plaintiff-appellant owned 200 shares of Camden's common stock, the total market value of which was approximately one thousand dollars.